

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Marshall Sloan,
Petitioner

vs

Case No. C-1-01-390
(Beckwith, J.)

Harry Russell,
Respondent

ORDER

Petitioner, an inmate in state custody, filed this habeas corpus action challenging a prison disciplinary action stemming from his marijuana use and resulting in his placement in disciplinary control for eight days and local control for thirty days on the grounds that his due process rights were violated when he was not permitted to call witnesses or appeal the decision. (*See* Docs. 1, 6). On April 17, 2002, this Court issued an order adopting the magistrate's report and recommendation recommending that the petitioner's petition for habeas corpus pursuant to 28 U.S.C. § 2241 be denied. (Doc. 7). The Court also denied petitioner a certificate of appealability and leave to appeal *in forma pauperis*, certifying that an appeal of its order would not be taken in good faith. (*Id.*). On March 9, 2003, petitioner filed a motion for relief from judgment (Doc. 9), which this Court denied on August 14, 2003 (Doc. 18). On September 11, 2003, petitioner filed a notice of appeal to the United States Court of Appeals for the Sixth Circuit from this Court's Order entered on August 14, 2003 denying petitioner's motion for relief from judgment. (Doc. 20). This matter is before the Court on a notice filed on October 9, 2003 in the appellate court and copied to the undersigned, in which the United States Court of Appeals for the Sixth Circuit

indicates that petitioner's appeal will be held in abeyance temporarily to permit the district court to make rulings on petitioner's liability for the filing fee and whether any issues should be certified for appeal.

By Order of October 7, 2003, this Court certified that the petitioner's appeal of this Court's Order denying his motion for relief from judgment was not taken in good faith and denied petitioner leave to proceed *in forma pauperis* on appeal. (Doc. 22). See Fed. R. App. P. 24 (a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997). For the reasons stated in this Court's August 14, 2003 Order denying petitioner's motion for relief from judgment (Doc. 18) and for the reasons stated in this Court's Order of April 17, 2002 denying habeas corpus relief (Doc. 7), it is ORDERED that a certificate of appealability not issue with respect to this Court's August 14, 2003 Order because petitioner has failed to make a substantial showing of the denial of a constitutional right that is remediable in this proceeding. See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). Petitioner has not shown that reasonable jurists could debate whether the claims alleged in the petition should have been resolved in a different manner or that the issues presented were "adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 123 S.Ct. 1029, 1034, 1039-40 (2003) (quoting *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000)) (in turn quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). Accordingly, this Court concludes that petitioner is liable for the filing fee and declines to certify any of petitioner's issues for appeal.

Date: October 24, 2003

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s/Sandra S. Beckwith

Sandra S. Beckwith, Judge
United States District Court